

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 06-0066P

Income Tax

For the Short Period ended December 31, 2004

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late payment and filing of the corporate income tax return for the short period ending December 31, 2004.

The taxpayer needed a valuation study completed on the "spin-off" transaction between the taxpayer and the taxpayer's former corporate parent. This valuation study was needed to complete the corporate income tax return. This valuation study was not completed until May 2005, six weeks after the due date of the corporate income tax return. Because of this, the taxpayer was not able to accurately calculate the extension payment, and therefore, the taxpayer erroneously underpaid the extension payment.

The taxpayer is an Indiana company.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests abatement of the penalty as the information necessary to file the corporate income tax return was not available until after the due date.

The Department points out that the error is the result of a planned income transaction, and therefore, is a case of inattention.

The regulation which controls the application of penalty is 45 IAC 15-11-2(b) which states,

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.

Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.